

### **REMARKS**

Reconsideration and allowance in view of the following remarks are respectfully requested.

#### **Rejection of Claims 1, 3, 4 and 6 Under 35 U.S.C. §103(a)**

The Office Action rejects claims 1, 3, 4 and 6 under 35 U.S.C. §103(a) as being unpatentable over Cobbley et al. (U.S. Patent No. 5,818,510) (“Cobbley et al.”) in view of Peckover (U.S. Patent No. 6,119,101) (“Peckover”) and further in view of Dimitrova (U.S. Patent No. 6,363,380) (“Dimitrova”). Applicants respectfully traverse this rejection and submit that even if combined these references fail to teach each limitation of the claims. Applicants further traverse the conclusion that one of skill in the art would have sufficient motivation or suggestion to combine these references.

First, Applicants respectfully submit that the combination of references fail to each limitation of the claims. On page 2 of the Office Action, the Examiner asserts that a module is taught in Cobbley et al. (Device 112-130) which is configured to classify a media collection as a program verses commercials. The Examiner cites “secondary or associated data” as language which is associated with this step and such data as real time stocks, weather reports, text associated with video and so forth. Applicants respectfully ask for a clarification of where the language “secondary or associated data” comes from. Applicants could not find such language in Cobbley et al. or within the claims. This language simply appears to be created by the Examiner and thus Applicants respectfully submit that this severely weakens the Examiner’s analysis. In other words, the Examiner appears to cast the teachings of Cobbley et al. as teaching classifying a media collection as programs versus commercials wherein Cobbley et al. perhaps does not use the term commercials (as is conceded on page 3) but rather teaches classifying a media collection as programs or “secondary or associated data”. The problem is that Cobbley et

al. fail to use this language and thus the strength of the Examiner's position is actually quite weak. Cobbley et al. do reference weather reports, news broadcasts and so forth in various places. See column 1, lines 19-21; column 3, lines 65-68; column 9, line 54; column 15, lines 24-37. Applicants respectfully submit, however, that there is no reference in any of these locations to classifying the media collection based as program content versus commercials. For example, column 1, lines 19-21 merely state that "such broadcasting encompass a wide spectrum of information, including news broadcasts, weather reports, soap operas, etc." Thus no classifying is mentioned.

Further, the word "commercial" is never found in Cobbley et al. Applicants simply submit that wherever a portion of a broadcast is taught in Cobbley et al. as being segmented, it is only with reference to program content and not commercials. For example, column 3, line 65, teaches "when the broadcast information is a news broadcast, the video image and/or audio data can be divided into several subject areas referred to as program segments. Each of these program segments then includes multiple story segments..." See also column 4, lines 13-24. Therefore, the only indexing or division Cobble et al. teach is for program content and no reference to commercials is found. Accordingly, this feature is not taught by Cobbley et al.

Next, the Office Action asserts that devices 112-130 teach the step of identifying segments within classified program content based on synchronizing recognized speech from speaker voice characteristics in each identified segment with captioning to extract stories. Applicants respectfully traverse the analysis on page 2 of the Office Action that asserts that this feature is not taught by device 112-130. The portions of the prior art cited by the Examiner do not teach any synchronization based on recognized speech from speaker voice characteristics in each identified segment with captioning to extract stories. For example, column 5, line 56 – column 6, line 21, fails to teach anything regarding speech recognition. In fact, just following

this cited portion in column 6, lines 21-32, Cobbley et al. actually teach away from the present invention by expressly teaching that the index capture device 112 alternately indexes information either from the VBI lines or speech recognition to examine the broadcast information to obtain the indexing information. The VBI information is the control information and indexing information that is transmitted by a broadcasting source 105 during a vertical blinking interval (VBI). See column 4, line 62 - column 5, line 55. Applicants submit that it is clear that this portion of the Cobbley et al. fails to teach any “synchronizing” of recognized speech with captioning to extract stories. They clearly teach an expressly alternate approach of either using the indexing information from one of the VBI lines or alternately a speech recognition process. Column 9, line 50 – column 10, line 10, cited on page 2 of the Office Action, also fails to teach this limitation. This portion of the reference simply fails to teach anything regarding recognized speech and thus certainly cannot be cited as teaching synchronizing recognized speech with captioning to extract stories.

Column 15, lines 24-64 references indexing information based on closed captioning material. Therefore, based on the portion cited by the Examiner and additional portions cited herein by Applicants, Cobbley et al. teach that indexing for information may come from (1) VBI lines, (2) speech recognition processes, or (3) close captioning material. Inasmuch as the reference expressly teaches alternate approaches, Applicants respectfully submit that there is simply no teaching of identifying segments within classified program content based on synchronizing recognized speech from the speaker voice characteristics in each identified segment with captioning to extract stories. Applicants also further note that there is clearly no reference to such synchronization for the result of “to extract stories”. Thus, Applicants submit that this limitation is also not taught by Cobbley et al. Inasmuch as Cobbley et al. fails to teach anything regarding synchronized speech, they also fail to teach the step of indexing the media

collection to create an index library based on the identified segments and synchronized speech. The Office Action asserts that columns 3, 4, 9 and 15 teach this limitation. However, simply because Cobbley et al. teach indexing program content in the manner which they do and which is listed above, they still fail to teach indexing based on synchronized speech.

Next, the Office Action cites Peckover and asserts that it would be obvious to one of ordinary skill in the art to incorporate the teachings of Peckover into the system of Cobbley et al. to index/search for ads meeting certain criteria in order to provide matching ads according to user preference. Applicants strongly traverse this rejection and submit that one of skill in the art would not have sufficient motivation or suggestion to combine these references. Applicants briefly review the law regarding obviousness.

To establish a *prima facie* case of obviousness, the Examiner must meet three criteria. First, there must be some motivation or suggestion, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to combine the references. Second, there must be a reasonable expectation of success, and finally, the prior art references must teach or suggest all the claim limitations. The Examiner bears the initial burden of providing some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." MPEP 2142.

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). MPEP 2143.01.

Furthermore, if the examiner determines there is factual support for rejecting the claimed invention under 35 U.S.C. 103, the examiner must then consider any evidence supporting the patentability of the claimed invention, such as any evidence in the specification or any other evidence submitted by the applicant. The ultimate determination of patentability is based on the entire record, by a preponderance of evidence, with due consideration to the persuasiveness of any arguments and any secondary evidence. *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). The legal standard of "a preponderance of evidence" requires the evidence to be more convincing than the evidence which is offered in opposition to it. With regard to rejections under 35 U.S.C. 103, the examiner must provide evidence which as a whole shows that the legal determination sought to be proved (i.e., the reference teachings establish a *prima facie* case of obviousness) is more probable than not. MPEP 2142.

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art, and all teachings in the prior art must be considered to the extent that they are in analogous arts. Where the teachings of two or more prior art references conflict, the examiner must weigh the power of each reference to suggest solutions to one of ordinary skill in the art, considering the degree to which one reference might accurately discredit another. *In re Young*, 927 F.2d 588, 18 USPQ2d 1089 (Fed. Cir. 1991). MPEP 2143.01.

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

With these principles in mind, Applicants respectfully submit that one of skill in the art, by a preponderance of the evidence, would not have sufficient motivation or suggestion to combine Peckover with Cobbley et al. Fundamentally, Peckover deals with an intelligent agent for electronic commerce. This reference begins by stating the following: "The trading of goods

and services is one of the basic human activities. From the first meeting of pre-historic men to trade animal skins for berries, to country fairs, to the most intricate computer-based trading of international financial instruments, the marketplace supports the survival and flourishing of our lives.” Column 1, lines 20-25. Peckover discloses a virtual marketplace in which market transaction data is gathered and analyzed for consumers. The basic system is shown in Figure 1 with a consumer user and an agent system 10 and a provider user. The market is shown as feature 18. Applicants submit that this reference is non-analogous to Cobbley et al. who teach a method and apparatus for providing broadcast information with indexing. Where Cobbley et al.’s purpose is to generate and transfer a stream of broadcast information which includes multiple video and audio information segments to a receiving device, Applicants respectfully submit that there would be little reason for one of skill in the art to explore the teachings of Peckover which provide for intelligent agents for electronic commerce into the teachings of Cobbley et al. These are in entirely different International and U.S. classes in terms of the subject matter of the application and simply because Peckover may reference advertisements in columns 23 and 24 with respect to the sell ad manager function, Applicants submit that this does not lend itself to the television broadcast system of Cobbley et al. For example, it is clear in column 23, lines 29-30, that both consumers and providers may place ads for selling and buying in the market 18. This is clearly for an interactive environment in which people are actively purchasing products. This is not what is typically thought of when contemplating broadcast television of news broadcasts, weather reports, soap operas and so forth. Accordingly, Applicants respectfully submit that the preponderance of the evidence is in Applicants’ favor that these references should not be combined. Applicants remind the Examiner that the preponderance of the evidence standard is the easiest standard to meet in the law which favors Applicants in terms of the burden of proof. These references are non-analogous and cover

entirely different subject matters. Accordingly, Applicants submit that they should not be combined.

Applicants respectfully submit that for the foregoing reasons, claim 1 is patentable inasmuch as even if combined each of the references fails to teach numerous limitations of the claims and by a preponderance of the evidence Peckover should not be combined with Cobbley et al. Claims 3-7 depend from claim 1 and recite further limitations therefrom. Accordingly, these claims are patentable and in condition for allowance.

Claim 18 recites similar limitations in the context of a system embodiment to those recited in claim 1. Accordingly, for the same reasons, Applicants submit that claim 18 patentable and in condition for allowance.

**Rejection of Claims 5 and 7 Under 35 U.S.C. §103(a)**

The Office Action rejects claims 5 and 7 under 35 U.S.C. §103(a) as being unpatentable over Cobbley et al. in view of Peckover and further in view of Dimitrova and further in view of Hoffert et al. (U.S. Patent No. 5,983,176) (“Hoffert et al.”). Applicants traverse this rejection and submit that for the same reasons set forth above, namely, that Cobbley et al. should not be combined with Peckover and the Cobbley et al. fail to teach several limitations of the parent claim 1, that claims 5 and 7 are patentable and in condition for allowance.

**CONCLUSION**

Having addressed all rejections and objections, Applicants respectfully submit that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited. If necessary, the Commissioner for Patents is authorized to charge or credit the **Novak, Druce & Quigg, LLP, Account No. 14-1437** for any deficiency or overpayment.

Respectfully submitted,

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By: /Thomas M. Isaacson/

Correspondence Address:

Thomas A. Restaino  
Reg. No. 33,444  
AT&T Corp.  
Room 2A-207  
One AT&T Way  
Bedminster, NJ 07921

Thomas M. Isaacson

Attorney for Applicants  
Reg. No. 44,166  
Phone: 410-286-9405  
Fax No.: 410-510-1433